

Securities and Exchange Commission

§ 229.1005

§ 229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

(a) *Transactions.* Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and:

(1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:

(i) The fiscal year when the transaction occurred; or

(ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1): The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

(2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of the transaction or series of similar transactions with that person exceeds \$60,000.

(b) *Significant corporate events.* Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:

(1) Merger;

(2) Consolidation;

(3) Acquisition;

(4) Tender offer for or other acquisition of any class of the subject company's securities;

(5) Election of the subject company's directors; or

(6) Sale or other transfer of a material amount of assets of the subject company.

(c) *Negotiations or contacts.* Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

(2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to paragraphs (b) and (c) of Item 1005: Identify the person who initiated the contacts or negotiations.

(d) *Conflicts of interest.* If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:

(1) The subject company, its executive officers, directors or affiliates; or

(2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d): If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

(e) *Agreements involving the subject company's securities.* Describe any agreement, arrangement, or understanding, whether or not legally enforceable, between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e) 1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of the subject securities. No disclosure, however, is required

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about standard default and similar provisions contained in loan agreements.

§ 229.1006 (Item 1006) Purposes of the transaction and plans or proposals.

(a) *Purposes.* State the purposes of the transaction.

(b) *Use of securities acquired.* Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.

(c) *Plans.* Describe any plans, proposals or negotiations that relate to or would result in:

(1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;

(4) Any change in the present board of directors or management of the subject company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board or to change any material term of the employment contract of any executive officer;

(5) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13);

(6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an automated quotations system operated by a national securities association;

(7) Any class of equity securities of the subject company becoming eligible for termination of registration under section 12(g)(4) of the Act (15 U.S.C. 78l);

(8) The suspension of the subject company's obligation to file reports

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under Section 15(d) of the Act (15 U.S.C. 78o);

(9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or (10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.

(d) *Subject company negotiations.* If the filing person is the subject company:

(1) State whether or not that person is undertaking or engaged in any negotiations in response to the tender offer that relate to:

(i) A tender offer or other acquisition of the subject company's securities by the filing person, any of its subsidiaries, or any other person; or

(ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and

(2) Describe any transaction, board resolution, agreement in principle, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1): If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§ 229.1007 (Item 1007) Source and amount of funds or other consideration.

(a) *Source of funds.* State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary